

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3088 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RABARI HIRABHAI DEVABHAI

Versus

STATE OF GUJARAT

Appearance:

MR CH VORA for Petitioners

MR SK PATEL, AGP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. The petitioners four in number, by this petition under Article 226 of the Constitution of India praying for quashing and setting aside of the notification Annexure-C on the record of this Special Civil Application dated 1.10.1982.

2. In Kachchh, grazing of goats and sheeps was permissible in Banni area at one point of time. However, as this grazing of goats and sheeps in Banni area was adversely affecting, the residents who have other their cattle, Sarpanchs of several villages have made representations to the State of Gujarat to the effect that this category of cattle shall not be permitted grazing in the area aforesaid. After considering this aspect carefully in exercise of the powers as conferred under Rule 65 of the Gujarat Land Revenue Rules, Rules known as Banni (Kachchh) Area Grazing Rules, 1967 (hereinafter referred as the Rules, 1967) were framed. As a result of framing of these Rules, 1967, grazing of goats and sheeps in the area concerned stood prohibited. The petitioners are not challenging the validity, illegality or propriety of these Rules at any point of time earlier to the filing of this Special Civil Application or in this Special Civil Application. Under the notification dated 17.8.1981 the Rules, 1967 were amended and as a result thereof grazing of goats and sheeps in the area concerned became permissible. Subsequently, it was found that because of grazing of goats and sheeps in the area concerned, growth of grass is being adversely affected, and therefore, it is decided to again amend the Rules, 1967. Accordingly the said Rules were restored to its original position as it were existing prior to this amendment, which have been done under the impugned notification.

3. This petition is contested by the respondents by filing reply to the same.

4. Mr.Vora learned counsel for the petitioners contended that the State of Gujarat has no authority or competence to frame the Rules, 1967 in exercise of powers as conferred under Rule 65 of the Gujarat Land Revenue Rules.

5. It has next been contended that, otherwise also by putting restriction on grazing of goats and sheeps in the area concerned, it results in violation of rights as conferred upon the petitioners under Article 19 of the Constitution of India.

6. In his submission amendment which was made in the Rules, 1967 on the ground that, grazing of goats and sheeps in the area has resulted in adversely affecting the growth of grass in the area concerned is perverse. This has been done only on the basis of the opinion of the officer of the Animal Husbandry Department.

7. Lastly, it is contended that, this opinion is not correct. Grazing itself in the area concerned will not result in less growth of grass. This is only concocted and manufactured report to make ground to amend the Rules, 1967.

8. Mr.S.K.Patel, AGP, appearing for the respondents contended that, Government of Gujarat has all authority and competence to frame such Rules under Rule 65 of the Gujarat Land Revenue Rules, which clearly goes to show that, the petitioners have not thought of challenging the Rules, 1967 at any point of time.

9. It has next been contended that, otherwise also this contention is not available or permitted to be raised by the learned counsel for the petitioners as the petitioners have not made any prayer in the Special Civil Application for declaration of these Rules,1967 to be beyond the competence and authority of the State of Gujarat.

10. Mr.Patel, learned AGP submits that, grazing of goats and sheeps in the area concerned had adversely affected the growth of grass. For this reason that, on the representations of the persons referred in paragraph 7 of the reply affidavit, the Rules,1967 were framed. It is true that, the Rules,1967 were subsequently amended, but this amendment was found detrimental to in the larger interest of other cattle. In case grazing of the goats and sheeps adversely affected the growth of grass, naturally what Mr.Patel submits, it will adversely affect the grazing of other cattle. It is one of the important sources of providing grass for grazing to other categories of cattle in the area.

11. Lastly, it is urged that, the respondents have taken care and it is not as what Mr.Vora contended that only on the basis of the opinion of the officer of the Animal Husbandry Department, the Rules,1967 were amended. Mr.Patel submitted that, opinions were taken of the Collector, Kachchh, Expert from Animal Husbandry Department and Forest Department which all unanimously opined for immediately prohibition of grazing of goats and sheeps in the area concerned.

12. Having given my thoughtful consideration to the rival submissions made by the learned counsel for the parties, I am in full agreement with the contentions raised by Mr.S.K.Patel, AGP, appearing for the respondents.

13. The Rules were framed in 1967 and the petitioners not thought of at any point of time, even till date, to challenge the validity of the same. It is correct to contend by Mr. Patel that in this Special Civil Application the petitioners have not prayed for declaration of the Rules, 1967 to be beyond the competence of the Government of Gujarat. The petitioners have not challenged the validity of these Rules, and they could not have challenged for obvious reasons and in fact, they want to take benefit of these Rules also. In case they do not want to take benefit of these Rules, what for they are challenging the notification dated 1.10.1982 under which these Rules have been amended. If, the grazing of goats and sheeps in this area is permitted to the petitioners, they may have no objection to these Rules. But moment this benefit is taken, they make all this hue and cry before this court. Only on this conduct of the petitioners, otherwise also this is not a fit case where these contentions as made by the learned counsel for the petitioners should be permitted or allowed to be raised. There is yet another reason on which I am satisfied that this grievance of the learned counsel for the petitioners made during the course of arguments deserves no acceptance. These Rules are in force since 1967 and after more than 32 years same cannot be declared ultravires of the Constitution in the larger interest of the people of the area who are having cattle population with them.

14. So far as second contention is concerned, it is suffice to say that, grazing of goats and sheeps in the area concerned was detrimental to the growth of grass in the area and to prohibit the same these Rules were framed in the year 1967. I fail to see any justification in the action of the State of Gujarat to amend these Rules in the year 1981. Once in 1967 it was considered to be necessary to prohibit the grazing of goats and sheeps in the area concerned, what for it was felt necessary to amend these Rules which has not been given out by the respondents either in reply or during the course of arguments. If we go by the facts and subsequent action of the State of Gujarat, it is clearly born out therefrom that to favour undisclosed person this would have been done.

15. Be that as it may. If, ultimately it was not found to be in the larger interest of other cattle population, after taking opinions of the experts in the matter, these Rules have been amended and whatever original position as it was existing in the year 1967 and purpose for which Rules, 1967 were framed has been

restored, this is a just reasonable and fair decision of the State of Gujarat to which no exception can be made.

16. Challenge to this notification impugned in this Special Civil Application, made on the ground of violation of Article 19 of the Constitution of India, is wholly misplaced. This cannot help to the petitioners in any manner. Otherwise also, it is permissible to the State to place reasonable restriction even on the fundamental rights of the citizens as conferred under Chapter III of the Constitution and it is a clear case of this category. The goats and sheeps are not only the cattle in the area. There are other cattle also. In case grazing of this category of cattle is considered to be prejudicial to the growth of the grass which ultimately result in nonavailability of the grass to other cattle, it is always open to the State Government to amend these Rules in the larger interest of the public and that what precisely has been done under the impugned notification.

17. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote,J.)

(pathan)